GOH SWEE JOO & ORS. v. PUBLIC PROSECUTOR

[A. Cr. J. (Hashim J.) October 13, 1961]

[K.L. — Criminal Application No. 4 of 1961]

Criminal Procedure — Preliminary inquiry — Application to be held before another Magistrate — Criminal Procedure Code (Cap. 6), s.417(a), effect of finding of fact by Magistrate.

The duty of a Magistrate holding a preliminary inquiry is to find whether there is a case for committal to the High Court and it cannot be said in such a case that the liberty of the accused is in jeopardy as the Magistrate cannot convict the accused.

MOTION.

M. Shanker for the 1st applicant.

Dato S. M. Yong for the 2nd, 3rd and 4th applicants.

T. H. A. Potts for the Public Prosecutor on a *fiat*.

Cur. Adv. Vult.

Hashim J.: This is a motion for an order that the preliminary inquiry presently held by Enche Chan Siew Yoon, Magistrate, Kuala Lumpur, into alleged offences by the applicants under section 91 of the Income Tax Ordinance, 1947, and sections 107 and 109 of the Penal Code be transferred to another Magistrate for hearing on the ground that Che Chan Siew Yoon has reached certain findings of fact adverse to the applicants in his written judgment dated the 26th day of July, 1961.

Section 417 of the Criminal Procedure Code gives power to a Judge to transfer criminal cases. From the arguments of counsel for the applicants I presume section 417(a), Criminal Procedure Code, applies. Section 417(a) reads—

"(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate to him."

Counsel for applicants argued that, as Che Chan Siew Yoon had stated in his written judgment that all the applicants were partners of the same firm and the balance sheet and the profit and loss accounts which formed the subject matter of the charge bore the signatures of the first applicant, he had made a finding of fact prejudicial to the applicants resulting in a feeling of apprehension on the part of the applicants that they would not get a fair and impartial inquiry. Counsel quoted a number of cases in support of their argument. I am of the opinion that the cases so cited are not relevant to the issue in this motion.

The learned Magistrate was asked to give a ruling on a preliminary objection in that the sanction produced in Court was bad in law. The learned Magistrate in a nine-page written judgment (incidentally the judgment could have been much shorter) ruled the sanction was good in law. In the course of his judgment he made the remark about the applicants being directors of the firm. In my opinion the judgment should be read as a whole and if it is so read it is clear that the Magistrate has made no finding as to fact.

The duty of a Magistrate holding a preliminary inquiry is to find whether there is a case for committal to the High Court. It cannot be said that the liberty of the accused person is in jeopardy as the Magistrate cannot convict the accused person. Even if the accused person is committed to stand his trial in the High Court, the Public Prosecutor may not proceed with the charge at all — see section 381 of the Criminal Procedure Code. I therefore can see no reason whatsoever in this motion to direct that the preliminary inquiry be held before another Magistrate and the motion is dismissed.

Motion dismissed.

Solicitors: *Lovelace & Hastings; S. M. Yong & Co.*

PAHANG LIN SIONG MOTOR CO. LTD. & ANOR. v. CHEONG SWEE KHAI & ANOR.

[C.A. (Thomson C.J., Hill and Good JJ.A.) October 16, 1961]

[K.L. — F.M. Civil Appeal No. 13 of 1961]

Damages — Personal injuries — Loss of arm — Pain and suffering — Assessment of damages — Exercise of judicial discretion — Guidance from awards in previous cases — Taking account of local conditions — Paucity and diversity of local cases.

The plaintiff, while travelling in a bus owned by the 1st defendant and driven by the 2nd defendant, sustained serious crushing injury to his right arm, which had to be amputated. He was awarded $2,400 by the learned trial Judge as special damages, and $25,000 as general damages. On cross-appeal it was argued on behalf of the plaintiff that the award of $25,000 for general damages was so inordinately low as to justify the Court of Appeal in interfering and in particular that it was very much below the general run of damages given by the Courts in such cases.

Held: (1) whether or not the award made by the trial Judge was satisfactory, in all the circumstances of the case, it was not a wholly erroneous estimate of the damage suffered. *Dicta* of Birkett L.J. in *Bird* v. *Cocking & Sons Ltd.* (1), Singleton L.J. in *Rushton* v. *National Coal Board* (2), and Morris L.J. in *Scott* v. *Musical* (14) applied;

(2) in applying the above *dicta* two considerations must be borne in mind: (i) local social economic and industrial conditions are poles apart from conditions in England and Scotland and any tendency to take a particular line in relation to assessment of damages in cases of this type from a consideration of English and Scottish cases is not calculated to produce very useful results; (ii) local reported cases are so few in number and so diverse in their conclusions that they cannot afford any very reliable guidance.

Cases referred to:—

(1) *Bird* v. *Cocking & Sons Ltd.* [1951] 2 T.L.R. 1260.

(2) *Rushton* v. *National Coal Board* [1953] 1 Q.B. 495, 499.

(3) *Waldon* v. *The War Office* [1956] 1 All E.R. 108.

(4) *Katijah binti Abdullah* v. *Leo Leong Toh & Anor.* [1940] M.L.J. 87.

(5) *Vellama* v. *Eng & Co. & Anor.* [1940] M.L.J. 246.